

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

<i>In re</i>	:	
	:	Chapter 11
WASHINGTON MUTUAL, INC., <u>et al.</u> ,	:	
	:	Case No. 08-12229 (MFW)
Debtors.	:	
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JPMORGAN CHASE BANK, N.A.,	:	
	:	
Appellant,	:	Consolidated
	:	C.A. No. 1:09-cv-0615 (GMS)
v.	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> ,	:	
	:	
Appellees.	:	
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JPMORGAN CHASE BANK, N.A.,,	:	
	:	
Plaintiff,	:	C.A. No. 1:09-cv-0656 (GMS)
	:	
v.	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	
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**RESPONSE OF THE FEDERAL DEPOSIT INSURANCE CORPORATION, AS
RECEIVER, TO DEBTORS' NOTICE OF ORDER STAYING D.C. ACTION**

The Federal Deposit Insurance Corporation, in its capacity as receiver for Washington Mutual Bank (the "FDIC-Receiver"), respectfully submits this response to the Notice of Order Staying D.C. Action (the "Notice"), which was filed by debtors in possession Washington Mutual, Inc. ("WMI") and WMI Investment Corp. (the "Debtors") putatively in connection with the motion of JPMorgan Chase Bank, N.A. ("JPMC") to withdraw the reference to the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") with

respect to two adversary proceedings. *See JPMorgan Chase Bank N.A. v. Washington Mutual, Inc., et al.*, C.A. No. 09-656 (GMS), Docket Entry No. 18.

Several different matters are pending before this Court concerning the Debtors' chapter 11 proceedings, including:

1. JPMC's motion to withdraw the reference, which is referred to in the Debtors' Notice;
2. Appeals by the FDIC-Receiver and by JPMC from orders of the Bankruptcy Court denying the parties' motions to stay or dismiss two adversary proceedings, which appeals have been consolidated under the caption *JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc., et al.*, Cons. C.A. No. 1:09-cv-0615 (GMS);
3. The FDIC-Receiver's motion pursuant to 28 U.S.C. § 158(d)(2) to certify the Bankruptcy Court orders at issue for direct appeal to the United States Court of Appeals for the Third Circuit; and
4. Motions by JPMC and the FDIC-Receiver, in the alternative, for leave to appeal from the orders.

In the Notice, the Debtors placed before the Court an order entered on January 7, 2010 by United States District Judge Rosemary M. Collyer staying an action that is pending in the United States District Court for the District of Columbia, styled *Washington Mutual, Inc. v. F.D.I.C.*, No. 1:09-cv-0533 (RMC) (D.D.C.). The FDIC-Receiver respectfully submits for the Court's information a copy of a November 4, 2009 transcript during which Judge Collyer heard argument on the Debtors' motion for a stay of that action. *See Exhibit A.*

As reflected in that transcript, on several occasions during that hearing, Judge Collyer noted the significance of the appellate matters that are pending before this Court to the ultimate determination of which court has jurisdiction over the parties' disputes, as between the Bankruptcy Court and the U.S. District Court for the District of Columbia. *See Tr.* at 62 ("It isn't seemly for me to proceed and decide something different from Judge Walrath when you have her on appeal. Get her reversed or live with it."); *see also Tr.* at 10 ("What I don't know is the status of the appeals on the jurisdictional claims of the Bankruptcy Court. That to me is an

important aspect to all of this.”); *id.* at 16 (“I’m just trying to figure out whether I can proceed in any sensible fashion here or whether I ought to stay this waiting to see whether [the Bankruptcy Court] actually has jurisdiction . . .”); *id.* at 52 (“And Judge Walrath right or wrong is proceeding apace. And so it seems – if she does have jurisdiction, we’ll discover that from either the District Court or the Third Circuit.”); *id.* at 61-62 (“The point is that [the Bankruptcy Court] is proceeding and you’ve appealed it. And if the Third Circuit says she’s right, then you’re stuck with it, right?”).

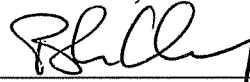
The FDIC-Receiver respectfully submits that the transcript provides relevant context with respect to the Debtors’ Notice.

Dated: Wilmington, Delaware
January 13, 2010

Of Counsel:

COLLEEN J. BOLES
Assistant General Counsel
LAWRENCE H. RICHMOND
Senior Counsel
BARBARA SARSHIK
Counsel
FEDERAL DEPOSIT INSURANCE
CORPORATION
Legal Division
3501 Fairfax Drive, VS-D-7014
Arlington, VA 22226
(703) 562-2309

YOUNG CONAWAY STARGATT
& TAYLOR, LLP



M. Blake Cleary (Bar No. 3614)
Jaime N. Luton (Bar No. 4936)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
mbcleary@ycst.com
jluton@ycst.com

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Thomas R. Califano
John J. Clarke, Jr.
DLA PIPER LLP (US)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501

Attorneys for the FDIC-Receiver